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OCT 03 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JAMES A. HATTEN, Clerk
Deputy Clerk

DATAPATH, INC.,

Plaintiff,

v.

**GENERAL DYNAMICS SATCOM
TECHNOLOGIES, INC.,**

Defendant.

CIVIL ACTION

FILE NO.

1:07-CV-2442

NOTICE OF REMOVAL

CAP

Defendant General Dynamics SATCOM Technologies, Inc. ("GDST"), by its undersigned counsel, hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446 and Rule 81(c) of the Federal Rules of Civil Procedure to remove this case from the Superior Court of Gwinnett County, Georgia (Civ. No. 07A-07908-2), where it is now pending, to the United States District Court for the Northern District of Georgia, Atlanta Division. GDST invokes this Court's jurisdiction under 28 U.S.C. §§ 1331 and 1332, and states the following grounds for the removal of this action:

1.

GDST is a defendant in the referenced civil action which was filed on or about August 31, 2007 and was served on GDST on September 10, 2007. Therefore this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446 (b). True and correct copies of the Service of Process Transmittal, Entry of Service, Summons, the original Verified Complaint, and First Amended Verified Complaint are attached as Exhibit A. A true and correct copy of Plaintiff's Notice of Leave of Absence is attached as Exhibit B. A true and correct copy of the September 20, 2007 Order Scheduling Hearing is attached as Exhibit C. Finally, true and correct copies of the Plaintiff's Motion for Leave to File Notice of Deposition and Notice to Take Deposition signed by the court below are attached as Exhibit D. These aforementioned exhibits comprise all of the process and pleadings served upon GDST to date.

2.

Defendant GDST has neither answered nor served any responsive pleading to the Complaint or made any appearance or argument in the Superior Court of Gwinnett County. A hearing is scheduled at the Superior Court of Gwinnett

County on October 10, 2007. *See* Exhibit C. A Notice to Take Deposition has also been filed for October 4, 2007. *See* Exhibit D.

3.

This action is removable to this Court pursuant to 28 U.S.C. § 1441 as this Court has original jurisdiction under 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states. Plaintiff Datapath, Inc. (“Datapath”) is incorporated in the State of Georgia with its principal place of business in the State of Georgia. Defendant GDST is incorporated in the State of Delaware with its principal place of business in North Carolina. *See* Declaration of Ronald K. Boyd, Officer and Vice President of General Dynamics SATCOM Technologies, Inc., attached hereto as Exhibit E.

4.

This action is also removable pursuant to 28 U.S.C. § 1441 because Plaintiff’s claims involve a federal question and therefore this Court has original jurisdiction under 28 U.S.C. § 1331. Plaintiff’s complaint seeks to enjoin GDST from performing a contract for the United States Government. *See, e.g.*, Complaint ¶¶ 40-42 and at Prayer for Relief. Such protest claims either are governed by Federal law, such as 4 C.F.R Part 21, *et seq.*, or barred by Federal law under the Federal Acquisition Streamlining Act of 1994, *see* 41 U.S.C. § 253j(d). Moreover,

federal question jurisdiction exists where federal law controls the interpretation of the contract provisions. *See Newton v. Capital Assurance Co., Inc.*, 245 F.3d 1306, 1308-9 (11th Cir. 2001) (holding that federal jurisdiction exists where a contract is interpreted according to federal common law and where plaintiff's relief depends on resolution of a substantial federal question); *see also American Pipe & Steel Corp. v. Firestone Tire & Rubber Co.*, 292 F.2d 640, 644 (9th Cir. 1961) (holding that subcontracts "let under prime contracts connected with national security, should be regulated by a uniform federal law").

Plaintiff's complaint also requires interpretation of Federal antitrust laws. Plaintiff asserts that the Federal Government awarded contracts to Plaintiff and Defendant (Compl. at ¶ 18), that the parties competed for the Delivery Order that is the subject of the Complaint (Compl. ¶¶ 24 and 25), that Defendant GDST won that competition (Compl. ¶ 28), and that GDST should be required to perform the competitive contract awarded to it by providing the product of the Plaintiff (Compl. ¶¶ 40-42). Plaintiff essentially asks the Court to eliminate competition in violation of the Federal Acquisition Regulation, 48 C.F.R. at Subpart 3.3.

5.

Pursuant to 28 U.S.C. § 1367, the Court should also exercise supplemental jurisdiction over Plaintiff's state law claims, as those claims "are so related to

claims [involving a federal question]. . . that they form part of the same case or controversy. . . ." See 28 U.S.C. § 1367(a).

6.

Consistent with 28 U.S.C. § 1653, Defendant reserves the right to amend any jurisdictional statements contained herein.

7.

A true copy of this Notice of Removal has been filed with the Clerk of the Superior Court of Gwinnett County, Georgia, attached hereto as Exhibit F, and written notice provided to all adverse parties as required by 28 U.S.C. § 1336(d).

Respectfully submitted,



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*Counsel for Defendant General Dynamics
SATCOM Technologies, Inc.*

DATED this 3rd day of October, 2007.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DATAPATH, INC.,

Plaintiff,

v.

GENERAL DYNAMICS SATCOM
TECHNOLOGIES, INC.,

Defendant.

CIVIL ACTION

FILE NO.

1 : 07 - CV - 244 2

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of October, 2007, served a true and correct copy of Defendant General Dynamics Satcom Technologies, Inc.'s Notice of Removal by depositing same in the United States Mail, postage prepaid and addressed to:

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